

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-118168-07

Date:

December 18, 2007

LEGEND:

X =

Y =

State =

Date 1 =

Date 2 =

Date 3 =

Dear

This letter responds to a letter dated April 6, 2007, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to treat Y as a qualified subchapter S subsidiary (QSub).

The information submitted states that X was incorporated under the laws of State on Date 1 and elected to be an S corporation effective Date 2. On Date 3, X acquired all of the stock of Y. X intended to make a QSub election for Y and relied upon its tax advisors to file the Form 8869, Qualified Subchapter S Subsidiary Election. However, neither X nor the Service has a record of a Form 8869 being filed with respect to Y.

Section 1361(b)(3)(A) provides that a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation, which is not an ineligible corporation, in which 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a QSub election. A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Based solely on the information submitted and the representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to treat Y as a QSub effective Date 3. Accordingly, provided that X makes a QSub election for Y by filing a completed Form 8869 effective Date 3, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for Date 3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed concerning whether X is or was a small business corporation or whether Y is or was eligible to be a QSub.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for section 6110 purposes